

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA DEMOCRATIC)
PARTY, et al.,)

Petitioners,)

v.)

KATHY BOOCKVAR, in her capacity)
as Secretary of the Commonwealth of)
Pennsylvania, et al.,)

Respondents.)

ELECTION MATTER

No. 407 MD 2020

**APPLICATION FOR LEAVE TO INTERVENE BY
COMMON CAUSE PENNSYLVANIA; THE LEAGUE OF WOMEN
VOTERS OF PENNSYLVANIA; THE BLACK POLITICAL
EMPOWERMENT PROJECT; MAKE THE ROAD PENNSYLVANIA, A
PROJECT OF MAKE THE ROAD STATES; PATRICIA M. DEMARCO;
DANIELLE GRAHAM ROBINSON; AND KATHLEEN WISE**

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Common Cause Pennsylvania; The League of Women Voters of Pennsylvania; The Black Political Empowerment Project (“B-PEP”); Make the Road Pennsylvania, a project of Make the Road States (“Make the Road PA”); Patricia M. DeMarco; Danielle Graham Robinson; and Kathleen Wise (together, “Applicants”) submit this Application for Leave to Intervene as co-Petitioners pursuant to Pennsylvania Rule of Appellate Procedure 1531(b) and Pennsylvania Rules of Civil Procedure 2327-2329.

I. INTRODUCTION

1. Applicants are nonpartisan organizations dedicated to promoting American democracy and the participation of Pennsylvania voters in democracy, as well as individual voters whose ability to vote would be impacted by the relief that Petitioners seek. Applicants seek leave to intervene to assert the interests of their organizations, constituents, and members with respect to the right to vote safely in the November 3, 2020 general election.¹ Given the unprecedented threat COVID-19 poses to in-person voting, Petitioners’ requested relief in this case would make voting in the general election safer. Applicants seek to protect their voting rights

¹ Applicants Common Cause Pennsylvania, League of Women Voters of Pennsylvania, Patricia M. DeMarco, Danielle Graham Robinson, and Kathleen Wise also moved to intervene in a mirror-image case filed in the Western District of Pennsylvania. The district court granted the motion, finding that the request was timely, presented “a common question of law or fact with the underlying action,” and that “there is no undue delay or prejudice involved.” *See Donald J. Trump for President, Inc. v. Boockvar*, No. 20-cv-00966 (W.D. Pa. Aug. 3, 2020), Dkt. 309.

and assert their particular interests regarding the risks of COVID-19 and the difficulties they or their members have already experienced with mail-in or absentee ballots during the Pennsylvania primary.

2. Ensuring that all eligible voters in Pennsylvania have the chance to vote in the midst of the COVID-19 pandemic is fundamental to our democracy. In-person voting creates significant health risks, potentially exposing voters and poll workers to infection while they stand in line indoors, where disease transmission is highest. Poll workers are especially vulnerable because they tend to be older; in 2018, most poll workers were over 60.² COVID-19 has had a disproportionate impact on minorities and persons with underlying medical conditions. The organizational Applicants (*i.e.*, Common Cause Pennsylvania and The League of Women Voters of Pennsylvania, B-PEP, and Make the Road PA) represent, have as members, and/or have as constituents such voters—seniors, racial minorities, and medically vulnerable individuals—and are particularly well-suited to advancing and protecting their interests to vote in the general election.

3. Applicants are individuals and organizations that represent and serve individuals whose fundamental right to vote would be impacted by a grant or

² Michael Barthel & Galen Stocking, *Older People Account for Large Shares of Poll Workers and Voters in U.S. General Elections*, PEW RESEARCH CTR. (Apr. 6, 2020), <https://www.pewresearch.org/fact-tank/2020/04/06/older-people-account-for-large-shares-of-poll-workers-and-voters-in-u-s-general-elections>.

denial of Petitioners' requested relief. Applicants are, have as members, or represent eligible registered voters in the Respondent counties, each of whom has a cognizable interest in voting while maintaining their own safety, the safety of their families, and their communities as a whole. The organizational Applicants also retain an interest in promoting active participation in democracy through voting and have devoted substantial resources toward this goal including, without limitation, education of voters about registration, voting by mail, and the location of drop-boxes. The relief Petitioners seek, or denial thereof, would impact the organizational Applicants' efforts to protect their members' ability to exercise their right to vote safely and their organizational goals of promoting full electoral participation. Accordingly, Applicants are critical participants in this action and are well-situated to promote and protect the right of all Pennsylvania voters to cast their ballots safely during this global pandemic. Applicants are therefore entitled to intervene under Pa.R.C.P. 2327 because they could have joined as an original party, because the determination of the action may affect a legally enforceable interest, and because there is no reason to deny the petition under Pa.R.C.P. 2329.

4. Applicants adopt some of Petitioners' allegations in Petitioners' Petition for Declaratory and Injunctive Relief and make additional allegations of their own, as shown in the attached proposed Petition for Review for Declaratory and Injunctive Relief. Applicants seek the relief Petitioners requested in their

Petition regarding mail-in ballots and drop boxes (Count 1), the deadlines for mailing and receipt of ballots (Count 2), contacting voters to cure ballot deficiencies (Count 3), and not excluding “naked” ballots (Count 4).³ Applicants also request additional relief in the form of Count 5, seeking a declaratory judgment that the provisions of the Department of State’s January 10, 2020 guidance regarding verification of a voter’s identity via mail-in ballots are sufficient to meet the requirements of Act 77; and Count 6, seeking an injunction ordering Respondents to begin the delivering ballots to voters no later than 28 days before the election.⁴

II. FACTS

A. The COVID-19 Pandemic Will Remain a Threat to the Safety of Pennsylvania Voters in November 2020.

5. The COVID-19 pandemic is an ongoing public-health emergency. As of August 5, over 116,000 Pennsylvanians had reported cases of COVID-19 and over 7,200 have died of the disease.⁵ The number of weekly cases in Pennsylvania

³ Applicants take no position on upholding the residency requirement for poll watchers (Count 5).

⁴ See PENN. DEP’T STATE, *Pennsylvania Applications and Balloting Guidelines: Mail-in and Absentee Ballots and Voter Registration Changes* (Jan. 10, 2020), https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/PADOS_Act%2077_Absentee%20and%20Mail-in%20Guidance.pdf.

⁵ *Coronavirus (COVID-19)*, PENN. DEP’T HEALTH (Aug. 6, 2020), <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Coronavirus.aspx>; *COVID-19 Data for Pennsylvania*, PENN. DEP’T HEALTH (Aug. 6, 2020), <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Cases.aspx>.

continues to rise, reaching 9,000 in the first two weeks of July.⁶ Seniors and people of any age who have certain underlying conditions such as high blood pressure, diabetes, chronic lung disease, or severe obesity are especially likely to have prolonged serious illness or to die from the virus. Declaration of Dr. Ranit Mishori, dated July 10, 2020 (“Ex. A”), ¶¶ 10–12. People of color have faced especially high rates of infection, complications, and death resulting from this coronavirus.⁷ *Id.* ¶ 15. Black Americans are disproportionately likely to contract and die from the virus—although they represent 12% of the population, they account for 22% of the State’s COVID-19 deaths. *Id.* ¶ 21. Nationwide, Black Americans are dying at a rate almost two and a half times higher than white

⁶ *COVID-19 Data for Pennsylvania*, PENN. DEP’T HEALTH (July 15, 2020), <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Cases.aspx>.

⁷ *COVID-19 in Racial and Ethnic Minority Groups*, CTRS. FOR DISEASE CONTROL & PREVENTION (updated June 25, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html> (citing higher rates of hospitalization and death from COVID-19 among ethnic minorities); *see also* Rachel Nania, *Medicare Data Shows Older Minorities Hit Hardest by COVID-19*, AARP (July 29, 2020), <https://www.aarp.org/health/conditions-treatments/info-2020/minorities-hospitalized-at-higher-rates.html> (“Minorities are disproportionately affected by the coronavirus and the illness it causes. Black beneficiaries were hospitalized at higher rates than other racial and ethnic groups, the data collected from Jan. 1 to June 20 shows. COVID-19 cases were also highest among Blacks. ... [The American Indian and Alaskan Native] population has the second-highest rate of COVID-19 hospitalizations and third-highest rate of coronavirus cases, the new report shows. Meanwhile, Hispanic beneficiaries had the third-highest rate of hospitalizations and second-highest rate of reported infections.”).

Americans;⁸ poorer communities and persons over 60 have also been hard-hit. *See id.* (about 89% of deaths occurred in the over 60 age group).

6. Doctors and public health experts have identified several interrelated socio-economic factors for the devastating impact of the coronavirus on communities of color including reduced access to quality health care, higher prevalence of underlying chronic medical conditions, and housing challenges, as well as being more likely to be employed as essential workers, facing increased exposure to the disease. *Id.* ¶¶ 15–22. These factors subject people of color and low-income people to greater exposure to the coronavirus, greater severity of disease, and substandard or inaccessible medical care. *Id.* These factors amplify the already increased risk of infection at poll sites. *Id.* ¶¶ 46–47.

7. A vaccine will not be widely available before the November election, if at all. *Id.* ¶ 23. For this reason, public-health experts and government officials have stressed that physical distancing is necessary to prevent the spread of the virus. *Id.* ¶¶ 24–28. To keep voters safe, Pennsylvania facilitated the easy and safe

⁸ The Color of Coronavirus: COVID-19 Deaths by Race and Ethnicity in the U.S., APM RESEARCH LAB (July 8, 2020), <https://www.apmresearchlab.org/covid/deaths-by-race>; *See* Wyatt Koma et al., Low-Income and Communities of Color at Higher Risk of Serious Illness If Infected with Coronavirus, KAISER FAMILY FOUND. (May 7, 2020), <https://www.kff.org/coronavirus-covid-19/issue-brief/low-income-and-communities-of-color-at-higher-risk-of-serious-illness-if-infected-with-coronavirus>.

return of ballots, consistent with state law, as other states have done.⁹ Advanced planning of the vote by mail process and associated options is necessary because experts “expect that coronavirus will continue to affect, sicken and kill large numbers of Americans moving forward and into the fall.” *Id.* ¶ 33.

8. In-person voting has contributed to transmission of COVID-19. Florida and Chicago both reported positive tests and deaths for poll workers who worked at poll sites.¹⁰ Following the Wisconsin primary, the state’s Department of Health conducted contact-tracing and concluded that 71 persons who voted in-person tested positive for COVID-19 leading to 700 more cases in the weeks following. *Id.* ¶¶ 30, 49. There is a statistically significant association between in-person voting and the spread of COVID-19. *Id.*

9. The risks of in-person voting are clear to doctors and public health experts. Doctors, public health experts, and voting rights organizations have all

⁹ See *COVID-19 and Elections*, NAT’L CONF. OF STATE LEGIS. (July 2, 2020), <https://www.ncsl.org/research/elections-and-campaigns/state-action-on-covid-19-and-elections.aspx>.

¹⁰ See, e.g., David Smiley & Bianca Padró Ocasio, *Florida Held Its Primary Despite Coronavirus. Two Broward Poll Workers Tested Positive*, MIAMI HERALD (Mar. 26, 2020, updated Mar. 27, 2020 9:11 AM), <https://www.miamiherald.com/news/politics-government/article241539451.html> (Florida); Mary Ann Ahern, *Poll Worker at Chicago Voting Site Dies of Coronavirus, Election Officials Say*, 5 CHI. (Apr. 13, 2020), <https://www.nbcchicago.com/news/local/chicago-politics/poll-worker-at-chicago-voting-site-dies-of-coronavirus-election-officials-say/2255072> (Chicago).

advocated for the distribution of mail-in ballots to voters.¹¹ *See Id.* ¶¶ 50–51. Thousands of voters can cycle through unventilated polling places on Election Day, exposing poll workers, who themselves are likely to be older, to increased chances of exposure. *Id.* ¶¶ 34–38. Voting machines and materials exchanged among voters and poll workers are potential sites of surface transmission. *Id.* ¶¶ 36–40. Precautionary environmental decontamination measures are less effective than avoiding prolonged contact with strangers, an inevitability at polling places. *Id.* ¶¶ 41–46. Even if all voters and poll workers followed best practices, the risk of exposure is amplified when people congregate indoors. *Id.* ¶¶ 39, 44–45. Asymptomatic individuals could spread the disease and those with mild symptoms could decide to vote despite the risk of transmission. *Id.* ¶ 45.

B. Applicants Are Individual Voters and Organizations that Promote the Interests of Voters and Voters with Particularized Interests.

10. Applicants are Pennsylvania voters and organizations that serve, represent, and have members who are Pennsylvania voters.

11. The League of Women Voters of Pennsylvania is a nonpartisan statewide non-profit formed in August 1920, shortly after the Nineteenth

¹¹ Letter to Members of the United States Senate and House of Representatives, Public Health Experts (May 5, 2020), https://cdn.americanprogress.org/content/uploads/2020/05/05061221/21DemocracyTeam_finalmailvotingandcovid19.pdf (signed by over 800 public health experts).

Amendment granted women suffrage in November 1918. The League and its 2,273 members are dedicated to helping the people of Pennsylvania, especially their most vulnerable, safely exercise their right to vote, as protected by the law, and especially in light of the devastating impact of COVID-19. Declaration of Terrie E. Griffin, dated July 14, 2020 (“Ex. B”), ¶¶ 5–10. Its mission is to empower voters and defend democracy. The League promotes political responsibility through informed and active participation in government and acts on selected public issues. It impacts public policies, promotes citizen education, and makes democracy work by, among other things, removing unnecessary barriers to full participation in the electoral process. *Id.* The League has pursued legal action against Pennsylvania officials to achieve these goals.¹²

12. Common Cause Pennsylvania is a non-profit political advocacy organization and a chapter of the national Common Cause organization. With approximately 36,000 members and supporters in Pennsylvania, Common Cause Pennsylvania works to encourage civic engagement and public participation in democracy, to ensure that public officials and public institutions are accountable to and reflective of all people, and to implement structural changes through the

¹² See, e.g., *League of Women Voters of Pa. v. Commonwealth*, 175 A.3d 282, 284 (Pa. 2018) (invalidating 2011 congressional map); Compl., *Common Cause of Pa. v. Commonwealth*, C.A. No. 05-cv-2056, 2005 WL 3136666 (M.D. Pa. Oct. 6, 2005), ECF No. 1 (along with Common Cause and individual plaintiffs, challenging Pennsylvania statute conferring pay raise to legislators, judges, and other elected officials).

American democratic process. Declaration of Suzanne Almeida, dated July 14, 2020 (“Ex. C”), ¶¶ 10–12. Common Cause Pennsylvania is nonpartisan and uses grassroots mobilization, community education, coalition building, legislative advocacy, and litigation to build a democracy that includes everyone. Common Cause Pennsylvania is working to make sure that voters in communities that vote at the lowest rates and use vote-by-mail at the lowest rates—which are also the communities that have been hit hardest by COVID-19—can exercise their right to vote without putting their health at risk. *Id.* ¶ 19.

13. The Black Political Empowerment Project (B-PEP) is a non-profit, non-partisan organization that has worked since 1986 to ensure that the Pittsburgh African-American community votes in every single election. During every election cycle, B-PEP’s work includes voter registration drives, get-out-the-vote activities, educational outreach about the voting process, and election-protection work. B-PEP focuses these activities in predominantly Black American neighborhoods in Allegheny County, with some efforts in Westmoreland and Washington Counties. In preparation for the November 3, 2020 election, B-PEP’s work has included educating voters about recent changes to Pennsylvania election procedures and safe voting during the COVID-19 pandemic, including encouraging voters to make use of Pennsylvania’s new mail-in ballot option.

14. Make the Road Pennsylvania, a project of Make the Road States (“Make the Road PA”), is a not-for-profit, member-led organization formed in 2014 that builds the power of Latino and working-class communities to achieve dignity and justice through organizing, policy innovation, and education services. Make the Road PA’s over 10,000 members are primarily working-class, Latino residents of Pennsylvania. Make the Road PA has offices in Allentown, Reading, and Philadelphia. However, the organization works across the state, including engaging members and constituents in Berks, Lehigh, Luzerne, Northampton, and Philadelphia counties. That work includes voter protection, voter advocacy (e.g., for the placement of drop-boxes), and voter education on, e.g., how to register to vote, how to apply for mail-in/absentee ballots, how to return mail-in/absentee ballots, and where to vote. Leading up to the June 2020 primary election, Make the Road PA sent text messages to members and non-members to educate them on the location of ballot drop-boxes. Make the Road PA’s interests and its members would be harmed absent full relief in this case. For example, if drop-boxes are disallowed, Make the Road PA will be forced to re-allocate scarce resources to new, and different voter education efforts to inform members and non-members how to vote in the absence of drop-boxes. In an environment with considerable misinformation and confusion about how to vote, the elimination of drop-boxes would add to the confusion, create challenges for Make the Road PA’s voting-

related initiatives, and make voting by Make the Road PA's members and constituents more difficult.

15. The organizational Applicants seek to intervene in this action to protect their organizational and members' interest in access to mail-in and absentee ballots, including drop-box locations. If Petitioners are not successful in preserving the use of drop-box locations for absentee and mail-in ballots, the organizational Applicants will be required to redirect scarce resources to reeducate confused voters about the location of polls, the transportation options to county board of elections offices, the requirements for voting by mail, and safe practices for voting in person. *See, e.g.*, Ex. C, ¶¶ 17–18. In the midst of a pandemic, the organizational Applicants are already spending substantial resources educating voters on drop-box locations and responding to inquiries on how to use drop-boxes and vote effectively and safely. Ex. B, ¶¶ 11–12; Ex. C, ¶¶ 15–16. For the organizational Applicants, expending additional resources to, *inter alia*, educate its members and other voters, arrange transportation, and to ensure that county election offices are prepared to receive an influx of mail and absentee ballots, will necessarily divert funds from other efforts important to their missions and the rights of their members. Ex. C, ¶¶ 17–18.

16. Applicants Patricia M. DeMarco, Danielle Graham Robinson, and Kathleen Wise are Pennsylvania voters who were detrimentally affected by the

lack of drop-boxes in their county during the primaries. They seek to intervene to maximize access to mail-in and absentee ballots via adequate local drop-box locations in the November election. During the primaries, they requested mail-in ballots early; some ballots were never mailed out or arrived too close to the deadline to return them. *See* Declaration of Danielle Graham Robinson, dated July 14, 2020, (“Ex. D”), ¶¶ 7–10; Declaration of Kathleen Wise, dated July 9, 2020 (“Ex. E”), ¶¶ 6–7. Diligent voters, like Ms. DeMarco, were forced to cast provisional ballots in person because they did not know if their county board of elections received their mail-in ballots. *See* Declaration of Patricia M. DeMarco, dated July 9, 2020, (“Ex. F”), ¶¶ 7–10. Ensuring adequate local drop-box access in November eliminates the uncertainty Ms. DeMarco faced—whether her vote counted in the June primary. Ex. F, ¶ 10. If Petitioners are not successful, some counties may continue to opt for centralized drop box locations, as Allegheny did last June. But, as the June primary demonstrated, not all voters are able to travel safely to centralized locations to cast ballots or face increased costs to do so. *See* Ex. D, ¶¶ 11–12; Ex. E, ¶¶ 8–11. Applicants’ interests are broader than those of the named Respondents, who may seek a narrower implementation of election laws that burden the right to vote. Applicants’ interests are also broader than those of Petitioners, as they are nonpartisan organizations and their missions focus on voter access, regardless of party affiliation. Pennsylvania voters should not be faced

with uncertainty as to whether their mail-in ballots were received and counted, particularly during an already disruptive pandemic. Secure drop boxes provide an effective remedy.

II. APPLICANTS ARE ENTITLED TO INTERVENE.

17. In Pennsylvania, a party is entitled to intervene if they “could have joined as an original party in the action or could have been joined therein” or “the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action.” Pa.R.C.P. 2327(3)-(4). The application may be refused only if “(1) the claim or defense of the petitioner is not in subordination to and in recognition of the propriety of the action; or (2) the interest of the petitioner is already adequately represented; or (3) the petitioner has unduly delayed in making application for intervention or the intervention will unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties.” Pa.R.C.P. 2329. Thus, “a grant of intervention is mandatory where the intervenor satisfies one of the four bases set forth in Rule No. 2327 unless there exists a basis for refusal under Rule No. 2329.” *Allegheny Reprod. Health Ctr. v. Pennsylvania Dep’t of Human Servs.*, 225 A.3d 902, 908 (Pa. Commw. Ct. 2020).

18. Applicants satisfy each of the four requirements of Pa.R.C.P. 2327, and there is no basis for denying intervention under Pa.R.C.P. 2329. The Court should therefore grant their application to intervene.

A. The Determination of This Action May Affect a Legally Enforceable Interest of the Applicants.

19. Applicants have an interest in the litigation that is “substantial, direct, and immediate.” *Markham v. Wolf*, 136 A.3d 134, 139 (Pa. 2016). Specifically, Applicants have a substantial, legally cognizable interest in protecting their own and their members’ rights to vote safely—a right that is especially at risk during a global pandemic, including through access to mail-in and absentee ballots, the ability to deliver ballots via readily accessible secure drop-boxes, and the counting of timely mailed ballots even where delivery is delayed by circumstances outside individual voters’ control.

20. Patricia M. DeMarco, Danielle Graham Robinson, and Kathleen Wise have a substantial and legally cognizable interest in ensuring that adequate and secure local drop-boxes are provided so that their votes are counted. *See, e.g., Baker v. Carr*, 369 U.S. 186, 206 (1962) (“[V]oters who allege facts showing disadvantage to themselves as individuals have standing to sue.”). They are Pennsylvania voters who faced burdens voting in the primary election with respect to the use of mail-in ballots. This resulted in increased costs, Ex. D, ¶ 12, uncertainty of whether their vote counted, Ex. F, ¶¶ 10–12, and the inability to cast

a vote at all, Ex. E, ¶¶ 11, 12. Uncertainty over whether ones' vote will be counted diminishes the effectiveness of the franchise for all similarly situated individuals. *See Baker*, 369 U.S. at 207–08. Without adequate drop box locations, Applicants Robinson, DeMarco, and Wise are disadvantaged in exercising their right to vote and their interest is cognizable.

21. The organizational Applicants expend considerable resources for the purpose of ensuring that eligible voters in Pennsylvania can exercise their right to vote. The League and Common Cause have organizational missions and goals of expanding access to voting, and are committed to eliminating barriers to voting and increasing civic engagement, especially in communities who have been traditionally disenfranchised (e.g., minority communities). Voter access is a critical element of those goals. Applicants' interest in ensuring that eligible voters have access to the ballot box is concrete, protectable, and substantial. If Petitioners' claims are not successful, Applicants expect to divert and spend significant additional resources—including volunteers, time, and expenditures—to re-educate voters about drop-box locations and the requirements for mail-in or absentee ballots, arrange transportation for voters, and work with election officials to implement the change. Ex. B, ¶¶ 12–13; Ex. C, ¶¶ 17–18. Applicants' interest is thus cognizable. Moreover, the organizational Applicants have standing on behalf of their members, among whom are Pennsylvania voters. *See, e.g.,*

Robinson Twp. v. Commonwealth, 83 A.3d 901, 922 (Pa. 2013) (“[A]n association has standing as representative of its members to bring a cause of action even in the absence of injury to itself, if the association alleges that at least one of its members is suffering immediate or threatened injury as a result of the action challenged.”).

B. Applicants’ Interest Is Not Adequately Represented.

22. The existing parties in the litigation do not adequately represent Applicants’ interests because those interests “may diverge” from those of the Petitioners and Respondents. *Larock v. Sugarloaf Twp. Zoning Hearing Bd.*, 740 A.2d 308, 314 (Pa. Commw. Ct. 1999). Since no party currently in the litigation “unequivocally share[s] [Applicants]’ interest[s],” the application to intervene should be granted. *Id.*; see also *D. G. A. v. Dep’t of Human Servs.*, No. 1059 C.D. 2018, 2020 WL 283885, at *7 (Pa. Commw. Ct. Jan. 21, 2020) (reversing denial of petition to intervene in administrative proceeding because “the personal interests of [proposed intervenors] in their individual welfare could diverge from the more general interest of [a governmental agency] in public welfare”).

23. Applicants meet this standard because neither the partisan Petitioners, the Respondent Commonwealth as represented by Secretary Boockvar, nor the Respondent Pennsylvania counties “unequivocally share” Applicants’ interests. Political parties and elected officials do not necessarily share Applicants’ interests in ensuring widespread access to voting among all constituencies. Applicants

represent all voters, including minority communities that are particularly and adversely impacted by COVID-19 and are expected to have increased difficulty exercising their right to vote. Consistent with their organizational missions and goals, the organizational Applicants have interests in ensuring that all eligible voters in Pennsylvania can vote by mail and be ensured that their voters will count. Therefore, the Applicants have and will expend resources to increase access to voting among all voters, not only voters for a particular political party or county. Further, the individual voter Applicants experienced particular difficulties voting during the primary and have an interest in ensuring their ability to vote safely in the November election. Specifically regarding the ability to cure defects, the individual Applicants, and members and constituencies of the organizational Applicants have an interest in making sure that votes are counted as cast, and that there is an opportunity to cure ballot issues to ensure that all votes cast by eligible voters (including the individual Applicants) are counted. Similarly, individual voters (including the individual Applicants, and members of the organizational Applicants and their constituencies) have an interest in having their timely mailed ballots counted despite potential delays beyond their control, whereas the Respondent counties might favor earlier discharge of their duty to compile results more quickly. Respondent counties, in particular, may have more of an interest in efficiency in processing ballots than the need to take extra steps to protect the

rights of voters whose ballots may be returned late through no fault of their own or suffer from correctable defects.

24. Likewise, government entities do not necessarily share Applicants' interest in ensuring the availability of local secure drop-boxes for themselves and to expanding voting access for underrepresented groups. The counties' responsibility for the administration of elections does not extend to representation of the interests of the Applicants. The county election boards are responsible for overseeing the election and not for facilitating and supporting the right to vote of the elderly and the medically vulnerable. *Cf.* Ex. E, ¶¶ 1, 6–12; Ex. F, ¶¶ 5, 8–12. Governmental budgetary pressures may also impair citizens' voting rights.

25. Adequate and secure drop-boxes are integral to an effective vote by mail process. As the June primary demonstrated, the surge in mail-in and absentee ballots due to coronavirus led to vote suppression. News reports, local courts, and the individual Applicants highlight both county election officials' and the Post Office's substantial delays in timely sending ballots to the individual Applicants and ensuring that completed ballots were received by the county elections boards on time. Ex. D, ¶¶ 9, 10; Ex. E, ¶ 7; Ex. F, ¶¶ 8–9. Delaware County election officials admitted that at least 25,000 mail-in ballots were not mailed out until less than two weeks before the election, leaving voters uncertain about whether their

ballot would be counted by the deadline.¹³ If such delays continue in the November election, local secure drop-boxes allow the most vulnerable voters to vote safely and with confidence that their vote will be collected and counted. Here, Applicants' interests diverge from Respondents' because Respondents may find a single centralized location sufficient under the election law and easier to administer, as was the case in Allegheny County last June. *But see, e.g.*, Ex. E, ¶ 11. However, Applicants will demonstrate that adequate and secure drop-box access is necessary to ensure a free and fair election. Pennsylvania voters should not be faced with uncertainty as to whether their vote will be counted; adequate, secure drop-boxes provide certainty and an effective remedy.

26. For these reasons, Applicants provide a perspective that Petitioners lack in representing minority communities particularly affected by COVID-19 and seeking broader access to voting as a key mission. Applicants also provide a perspective that Respondents lack in balancing the need to ensure that only eligible voters register and vote with the obligation to ensure all eligible citizens are given robust opportunities to vote without undue burden, particularly during a pandemic.

¹³ *See, e.g., Mail-in Ballot Deadline Extended to June 9*, DEL. CTY. PA., <https://www.delcopa.gov/publicrelations/releases/2020/mailinballotdeadlineextended.html> (last accessed Aug. 6, 2020) (extending ballot deadline after conceding that ballots were not timely mailed); Jonathan Lai, *Thousands of Pennsylvania Voters Might Not Get Their Mail Ballots in Time to Actually Vote*, PHILA. INQUIRER (May 26, 2020), <https://www.inquirer.com/politics/election/pa-mail-ballots-deadline-2020-primary-20200526.html>.

See, e.g., Ariz. v. Inter Tribal Council of Ariz., Inc., 570 U.S. 1 (2013); *Pines v. Farrell*, 848 A.2d 94, 97–98 (Pa. 2004) (allowing intervention where proposed intervenor’s arguments were “not merely repetitive of the limited argument forwarded by respondent, but instead, promoted a proper resolution of the dispute”).

C. Applicants’ Application Is Timely.

27. This Application is timely. Petitioners initiated this litigation on July 10, 2020. The Court issued a scheduling order on July 30, 2020. Respondents have not yet answered the Petitioners’ Petition for Declaratory and Injunctive Relief. No hearing before this Court has been scheduled. Applicants’ prompt intervention does not delay the timely advancement of the action, prejudice the trial or the adjudication of the rights of the parties, or otherwise harm the parties.

III. RELIEF REQUESTED

28. Applicants adopt certain of Petitioners’ allegations and make additional allegations of their own, as shown in the attached proposed Petition for Review for Declaratory and Injunctive Relief. Applicants seek the same relief as Petitioners regarding mail-in ballots and drop boxes (Count 1), the deadlines for mailing and receipt of ballots (Count 2), contacting voters to cure ballot deficiencies (Count 3), and not excluding “naked” ballots (Count 4). Applicants also request additional relief in Applicants’ Count 5, seeking a declaratory

judgment that the provisions of the January 10, 2020 Department of State guidance regarding verification applications for mail-in ballots do not conflict with the requirements of Act 77; and Applicants' Count 6, seeking an injunction ordering Respondents to begin delivering or mailing ballots to voters no later than 28 days before the November 2020 election.

IV. CONCLUSION

29. For the reasons stated above and in the supporting declarations of Dr. Mishori, Mses. Almeida, Griffin, DeMarco, Robinson, and Wise, the Court should grant the Applicants' Application for Leave to Intervene.

Dated: August 10, 2020

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† Notice of appearance forthcoming.

++Not admitted DC; DC practice limited to federal court only.

VERIFICATION

I am authorized to make this verification on behalf of the Common Cause Pennsylvania. I have personal knowledge of the statements made in the foregoing Application to Intervene, and verify that those statements are true and correct to the best of my own personal knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

 /s/ Suzanne Almeida
Signature

 Suzanne Almeida, Interim Director
Name and Position

Date: 8/20/2020

VERIFICATION

I am authorized to make this verification on behalf of the League of Women Voters of Pennsylvania. I have personal knowledge of the statements made in the foregoing Application to Intervene, and verify that those statements are true and correct to the best of my own personal knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

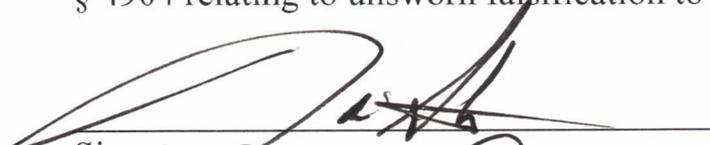
/s/ Terrie Griffin
Signature

Terrie Griffin, Co-President
Name and Position

Date: 8/10/2020

VERIFICATION

I am authorized to make this verification on behalf of the Black Political Empowerment Project. I have personal knowledge of the statements made in the foregoing Application to Intervene, and verify that those statements are true and correct to the best of my own personal knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.



Signature



Name and Position

Date: 

VERIFICATION

I verify that the statements made in the foregoing proposed Application to Intervene are true and correct to the best of my own personal knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

/s/ Patricia M. DeMarco
Signature

Patricia M. DeMarco
Name

Date: Aug. 10, 2020

VERIFICATION

I verify that the statements made in the foregoing proposed Application to Intervene are true and correct to the best of my own personal knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

/s/ Danielle Graham Robinson
Signature

Danielle Graham Robinson
Name

Date: Aug. 10, 2020

VERIFICATION

I verify that the statements made in the foregoing proposed Application to Intervene are true and correct to the best of my own personal knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

/s/ Kathleen Wise
Signature

Kathleen Wise
Name

Date: Aug. 10, 2020